

City of Richmond

Administrative Manual

SUBJECT: Claims Procedures

SECTION: Legal/City Attorney

POLICY NUMBER: AP 252

INITIAL DATE PREPARED: April 24, 2000

LAST DATE REVISED:

I. Purpose

City procedures agreed to between the City Attorney and other City departments and divisions that provide for consistent administration of certain policies which will ensure successful initiation, defense and prosecution of claims.

II. Policy

- A. This policy and procedure is designed to ensure compliance with City policies in a variety of areas in which the City Manager exercises or delegates administrative authority.
- B. It specifies in more detail the understanding between the various City entities responsible for ensuring that certain programs are administered in a manner in which litigation can be avoided and claims defended and prosecuted successfully.
- C. If any City employee is asked to accept service of a summons or complaint, the server should be directed to the City Clerk. If the summons or complaint is accepted by a City employee, it should be delivered directly to the City Clerk within 24 hours.
- D. It is not intended to duplicate what is contained in other documents nor formalize what is best left to the judgment of individual managers. It defines procedures which, though they may pertain to particular departments, divisions or phases of City operations, in some cases affect all City employees.

III. Procedures

A. Liability Claims

- 1. Claims are filed with the City Clerk and logged. The City Clerk shall:
 - a. Forward a copy to the Risk Manager.

City of Richmond

Administrative Manual

SUBJECT: Claims Procedures

SECTION: Legal/City Attorney

POLICY NUMBER: AP 252

INITIAL DATE PREPARED: April 24, 2000

LAST DATE REVISED:

- b. Process applications to file late claims in the same manner as Items (a) and (b).
2. The Risk Manager shall:
- a. Review the claim to determine if it provides all the information required by Section 910 of the Tort Claims Act.
 - b. Provide the notice required by Section 910.8 of the Act where the claim is insufficient in his/her opinion.
 - c. Review the claim to determine if it was filed within the time permitted by Section 911.2 of the Act.
 - d. Provide the notice required by Section 911.3 of the Act where filing is not timely in his/her opinion.
 - e. Present applications for late filing of claims to the City Council.
 - f. Notify claimants of the rejection of their claim, as required by Section 913 of the Act, or late claim, as required by Section 911.8.
 - g. Tender to third parties or their insurers where appropriate.
 - h. Transmit a copy of the investigation report to the City employee(s) who has knowledge of the facts giving rise to the claim.
 - i. Do an initial investigation, at his/her discretion, to determine if claimant is entitled to and willing to settlement of the claim early.
 - j. Order such investigation as he/she deems necessary.
 - k. Settle a claim, within his/her authority where appropriate.

City of Richmond

Administrative Manual

SUBJECT: Claims Procedures

SECTION: Legal/City Attorney

POLICY NUMBER: AP 252

INITIAL DATE PREPARED: April 24, 2000

LAST DATE REVISED:

- l. Prepare necessary release and notices.
 - m. Investigate whether the circumstances of the claim indicate any need for remedial action or new procedures which would prevent the repeat of a similar occurrence.
 - n. Notify the adjuster, broker and insurance company and coordinate settlement of non-litigated claims after consultation with the City Attorney.
 - o. Prepare requests for warrants after settlement or judgment.
 - p. Assist in obtaining signatures on releases.
 - q. Maintain loss runs and other claim history, including deductible balances for each policy year.
3. The City Attorney shall, upon receipt of summons and complaint, either:
 - a. Tender defense to third parties and/or their insurers.
 - b. Tender to City's insurance carrier.
 - c. Defend.
 - d. Procure outside counsel.
 - e. Advise the Risk Manager of any unsafe acts or conditions discovered in the course of litigation.

City of Richmond

Administrative Manual

SUBJECT: Claims Procedures

SECTION: Legal/City Attorney

POLICY NUMBER: AP 252

INITIAL DATE PREPARED: April 24, 2000

LAST DATE REVISED:

B. Other Claims

1. The Risk Manager will negotiate first-party insurance claims and report any failure to provide coverage to the City Attorney.
2. The City Attorney shall provide counsel for coverage disputes and subrogation matters.
3. Actions filed in small claims courts either by claimants (including those who failed to file a claim) or by the City to recover from third parties shall be processed by Risk Management.

C. Damage/Accident Reports

1. All City employees who observe an accident or damage involving City employees or equipment shall report the accident to the Risk Manager and shall:
 - a. Fill out a Damage/Accident Report (AP 108-1) and file the report with the Risk Manager.
 - b. If an eyewitness to the cause of the damage, record any license numbers or other information relevant to identifying the persons causing the damage.
 - c. Where practical, call the person available to take pictures of the accident.
2. The Damage/Accident Report shall contain the following information where applicable:
 - a. Auto license numbers
 - b. Driver's license numbers
 - c. Description of damage and diagram

City of Richmond

Administrative Manual

SUBJECT: Claims Procedures

SECTION: Legal/City Attorney

POLICY NUMBER: AP 252

INITIAL DATE PREPARED: April 24, 2000

LAST DATE REVISED:

- d. Location and diagram
 - e. Date and time of accident and/or observation
 - f. Names and addresses of witnesses
 - g. Names and addresses of persons, and their employers, causing damage
 - h. Name of persons and/or identity of property injured
 - i. Employer of person and/or owner of property injured
 - j. Insurance.
3. The Risk Manager shall investigate and discover any information not provided on the Damage Report.
 4. Damage caused by ships shall be reported to the City Attorney immediately to determine if seizure of the ship is required.
 5. The responsible department promptly shall proceed after damage occurs to take the required steps to repair the damage and to determine related City costs and losses in order to maximize chances of prompt and complete recovery on behalf of the City.
 6. The Risk Manager shall coordinate collections from insurance carriers of the third parties causing the damage.
 7. The Finance Department shall bill to others when damages are ascertained and provide notice of default of payment to the City Attorney within the time periods required by subsection 8 below.
 8. If collection of damages is not completed within four months after the City bills others for damages, the Finance Department shall file a small claims suit if the amount is under \$5,000. If damages are over \$5,000, the City Attorney shall take legal action.

City of Richmond

Administrative Manual

SUBJECT: Claims Procedures

SECTION: Legal/City Attorney

POLICY NUMBER: AP 252

INITIAL DATE PREPARED: April 24, 2000

LAST DATE REVISED:

D. Response To Enforcement Agencies

1. Requests for a response by administrative agencies which may either themselves bring an action or authorize the complainant to bring an action, such as the Fair Employment Housing Commission or Equal Employment Opportunity Commission, shall be immediately forwarded to the City Attorney whenever received by another department.
2. The City Attorney shall prepare the response required by the agency:
 - a. Those departments which are the custodians of the records requested by the agency shall provide the City Attorney copies of the records required by the City Attorney to respond to the agency.
 - b. Those departments which are the custodians of those records required to generate statistics or other compilations of facts requested by the agency shall provide the City Attorney with the statistics or other information required by the City Attorney to respond to the agency.
 - c. In the event that the department cannot provide the information requested by the City Attorney in the time required to respond to the agency the department shall provide the City Attorney with a time estimate for producing the information and the reason why more time is needed to support a request for a continuance from the agency by the City Attorney.
3. The City Attorney shall prepare witnesses, exhibits and testimony for any hearings ordered by the agency.
4. Unless time does not permit, the City Attorney shall review the proposed response with those departments which may be affected by the complaint.

City of Richmond

Administrative Manual

SUBJECT: Claims Procedures

SECTION: Legal/City Attorney

POLICY NUMBER: AP 252

INITIAL DATE PREPARED: April 24, 2000

LAST DATE REVISED:

E. Internal Nondiscrimination Disputes/Conflicts

Employees who feel they have an internal dispute or conflict that they cannot resolve themselves should first contact their Department Director. If they cannot resolve the matter, they should contact the Director of Human Resources Management. The Department Director and Director of Human Resources Management shall make every attempt to resolve any informal nondiscrimination dispute/conflict.

F. Internal Discrimination Complaints Procedures

1. Discrimination complaint procedures are contained in Policy AP 104. The City's discrimination complaint procedures should be followed. The purpose of these administrative policies and procedures is to assure effective implementation of the City's policies.
2. If the discrimination complaint is against the Director of Human Resources Management, the complaint will be filed with the City Manager, who will designate a substitute to carry out the responsibilities normally assigned to the Director of Human Resources Management.
3. Investigations of discrimination complaints by the Director of Human Resources Management (or by the City Manager's designee appointed under Subparagraph 2 above) will be conducted in a manner which will preserve confidentiality as far as possible.
4. All findings required for discipline of employees under the Policy shall be approved by the City Attorney as to legal sufficiency prior to any action thereon, and the City Attorney shall be kept informed of the resolution.

City of Richmond

Administrative Manual

SUBJECT: Claims Procedures

SECTION: Legal/City Attorney

POLICY NUMBER: AP 252

INITIAL DATE PREPARED: April 24, 2000

LAST DATE REVISED:

G. Workers' Compensation Claims

1. Employees shall:
 - a. Upon injury, inform immediate supervisor and Risk Management.
 - b. If physically able to, prepare the following:
 - 1) Employee Report of Injury (AP 400-2).
 - 2) Employee's Claims for Workers' Compensation Benefits DWC-1 (AP 400-3).
 - c. If employee's injury is serious enough to require immediate medical attention, the above reference forms may be completed at a later time.
2. Supervisor shall complete:
 - a. Upon notice of an employee injury, immediately provide the injured employee with a Claims for Worker's Compensation Benefits DWC-1 (AP 400-3) no later than within 24 hours. If the injured employee is seriously injured and cannot receive a Claims form (AP 400-3), the supervisor shall mail one to the employee's home address not later than within 24 hours and the receipt should be noted to the file.
 - b. Supervisor's Occupational Injury Report (AP 400-5).
 - c. Employer's Report of Occupational Injury or Illness (Form 5020, OSHA (AP 400-6); supervisor calls Risk Management for six-digit OSHA number.
3. Risk Management shall:
 - a. Receive all Workers' Compensation claims.

City of Richmond

Administrative Manual

SUBJECT: Claims Procedures

SECTION: Legal/City Attorney

POLICY NUMBER: AP 252

INITIAL DATE PREPARED: April 24, 2000

LAST DATE REVISED:

- b. Retain a copy of all claims, a copy of all Employee's Report of Injury forms (AP 400-2), a copy of all Supervisor's Occupational Injury Report Forms (AP 400-5), a copy of report on the status of claims, a copy of delay letters sent to employees and a copy of claim denial letters sent to employees for the City Attorney.
 - c. Receive all requests, applications and documents pertaining to the claim.
 - d. Provide all notices and payments of benefits in a timely manner and in accordance with the California Labor Code.
 - e. Make all medical appointments, i.e. Qualified Medical Exam (QME) and Independent Medical Exam (IME).
 - f. Perform all other administrative duties required by law.
 - g. As soon as practicable, but in no event later than filing of an application for adjudication, report to the City Attorney any of the following matters not included in the claim: (a) A third party is responsible for the injury; (b) The employee is represented by an attorney.
4. The City Attorney shall defend all claims and applications in accordance with the following:
 - a. When an Application for Adjudication is received, the Senior Claims Examiner shall administer the file on the claim. The Risk Manager and the City Attorney will determine when the case requires an independent Worker's Compensation defense attorney to represent the City.

City of Richmond

Administrative Manual

SUBJECT: Claims Procedures

SECTION: Legal/City Attorney

POLICY NUMBER: AP 252

INITIAL DATE PREPARED: April 24, 2000

LAST DATE REVISED:

- b. Upon appointment of an independent Worker's Compensation defense attorney, all communication with the injured employee represented by counsel ceases and takes place between the applicant's attorney and the defense attorney.
 - c. The Senior Claims Examiner works closely with the defense attorney and consults and keeps the Risk Manager informed of the status and exposure of the case.
 - d. All correspondence or court documents received by the defense attorney shall be copied and the copies should be sent to the Senior Claims Examiner. Physical management of the files remains with the Senior Claims Examiner.
 - e. The Risk Manager shall inform the City Attorney of all significant exposure cases. The City Attorney shall become involved in the decision making process regarding settlement, trial, exposure, etc. and ultimately the City Attorney and Risk Manager may seek settlement authority above significant exposure cases from the City Council.
5. Investigations and confidentiality:
- a. Investigations shall be initiated and undertaken by Risk Management when a claim is questionable or if any clarification of the facts is needed. Such investigations may include determining the exact nature and extent of injury/injuries, statements from witnesses and in some instances, sub-rosa to determine activities of the injured while off work. The results of these investigations and reports of investigation are confidential and are kept in the Risk Management files, a division of the City Attorney's Office. Investigations may be used in the defense of litigated claims when necessary.

City of Richmond

Administrative Manual

SUBJECT: Claims Procedures

SECTION: Legal/City Attorney

POLICY NUMBER: AP 252

INITIAL DATE PREPARED: April 24, 2000

LAST DATE REVISED:

- b. Only the Risk Manager, City Attorney, and their designated staff with specific responsibility for the particular claim shall have access to the workers' compensation files. Said persons shall only use these files, and medical reports in particular, for purposes of defending lawsuits, arbitrations, grievances and claims where the employee has placed the matter disclosed in the file in issue or for administering benefit plans, disability income and leave from work where relevant thereto. The Risk Manager and City Attorney each shall establish and implement procedures to assure that files are stored, maintained and used in a confidential manner that will maximize protection for the injured employee involved and that only those persons with specific need to know will have access to the employee's file and that the documents in the file and the information contained in the documents will not be used or communicated except for the purpose set forth in the immediately preceding sentence.

H. Insurance Contracts

8. The Risk Manager, or any person assigned by the City Manager to obtain insurance, shall;
 - a. Share the proposed plan for and proposed terms of insurance coverage with the City Attorney and Director of Finance before negotiating or placing coverage with a carrier.
 - b. Provide the City Attorney a reasonable opportunity to be involved in negotiation over the terms of coverage.
 - c. Anticipate the coverage required in time for the City Council to authorize placing the coverage.
 - d. Obtain specimen policy language, copies or memorandum or binders, to the extent reasonably available, stating the final policy terms for approval as to form and legality by the City Attorney prior to finalizing coverage.

City of Richmond

Administrative Manual

SUBJECT: Claims Procedures

SECTION: Legal/City Attorney

POLICY NUMBER: AP 252

INITIAL DATE PREPARED: April 24, 2000

LAST DATE REVISED:

2. The City Attorney shall:
 - a. Recommend to the Risk Manager draft language on defense, selection of counsel, subrogation and other provisions to negotiate for inclusion in insurance policies.
 - b. Review the proposed terms of insurance policies prior to the placing of coverage, and, if feasible, before City Council authorization to place coverage.
 - c. Approve the selection of insurance counsel and approve all payments thereto.